

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DERWIN DAWSON,

Plaintiff,

v.

No. 1:20-cv-00078-KRS-LF

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

TRIAL SCHEDULING ORDER

THIS MATTER comes before the Court following a telephonic trial scheduling conference held on March 31, 2020. As reflected in the record, the Court hereby sets the following dates and deadlines:

A **Pretrial Conference** shall be held on **February 25, 2021 at 10:00 a.m.** (location to be determined). All attorneys participating in the trial must be present for the pretrial conference unless permission for telephonic appearance has been obtained from the Court. The parties may, but need not, be present.

Jury Selection and Jury Trial will begin on **March 29, 2021 at 8:30 a.m.** (location to be determined). Counsel are directed to submit a proposed consolidated final pretrial to the Court on or before **November 30, 2020**. The Court intends to seat nine jurors.

The pretrial order shall provide that no witness, except rebuttal witnesses whose testimony cannot be anticipated, will be permitted to testify unless the witness is identified in a witness list filed no later than thirty (30) days prior to the date set for trial. Any exceptions thereto must be upon order of the Court for good cause shown.

Motions in Limine: All motions in limine¹ shall be filed on or before **December 8, 2020** with responses due on or before **December 23, 2020**.

Witness Lists: The parties shall file their witness lists on or before **December 23, 2020**. The lists must disclose witnesses that the parties “will call” as well as witnesses that they “may call” at trial. Any objections to a witness named by an opposing party must be filed by **January 13, 2021**.

Designations and Counter-Designations of Deposition Testimony: On or before **January 15, 2021**, counsel for each party shall file a pleading designating, by deposition transcript page(s) and line number(s), the deposition testimony that the party intends to offer into evidence at trial. In the event that a party designates deposition testimony that will or may be offered into evidence at trial, then on or before **January 25, 2021**, any other party may counter-designate, by deposition transcript page(s) and line number(s), any other portion of the deposition testimony that should be offered into evidence pursuant to Federal Rule of Evidence 106. The deposition designation requirement does not apply to the use of a deposition to impeach the testimony of a witness who testifies in person at the trial, or to rebuttal testimony offered through deposition testimony.

On or before **February 2, 2021**, counsel shall **jointly submit one physical copy** of each deposition transcript that contains testimony that will or may be offered into evidence at trial to the Court’s chambers, with the parts of the deposition(s) that are to be offered into evidence highlighted. To this end, Plaintiff will use a yellow marker and Defendants will use a blue marker to highlight the portions of the deposition transcript that they each have designated. As an alternative to jointly submitting a physical copy of a deposition to the Court with the

¹ Motions challenging the admissibility of expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) are not motions in limine. Daubert motions shall be filed no later than the dispositive motions deadline.

designated portions of the deposition highlighted, the parties may jointly submit the deposition to the Court in PDF format, with the respective portions of the deposition highlighted, by emailing the PDF document to sweazeaproposedtext@nmd.uscourts.gov. Any objections to deposition testimony designated or counter-designated by an opposing party shall be filed on or before **January 26, 2021**. In the event a party wishes to make further designations or counter-designations of deposition testimony, other than those designations made in conformance with the procedure set forth above, the party shall first seek permission from the Court.

Exhibits: On or before **January 25, 2021** the parties shall **jointly** file a list of exhibits that the parties stipulate may be admitted into evidence without objection. On or before **January 25, 2021** each party shall file a list containing the exhibits that the party will or may offer into evidence, other than those exhibits for which the parties have stipulated to the admission into evidence. On or before **January 26, 2021** the parties shall **jointly** submit a physical copy of all exhibits to the Court's chambers. The exhibits shall be divided into two notebooks. One notebook shall include all exhibits, labeled consecutively, that the parties stipulate may be admitted into evidence without objection. The other notebook shall include all exhibits the parties have not stipulated may be admitted into evidence, labeled consecutively beginning with the next sequential number after the final stipulated exhibit designation. For instance, if there are fifty (50) stipulated exhibits, twenty (20) contested plaintiff's exhibits, and twenty (20) contested defendants' exhibits, one notebook shall contain stipulated exhibits numbered 1 to 50. The other notebook shall contain plaintiffs' contested exhibits numbered 51 through 70 and defendants' contested exhibits numbered 71 through 90.

On or before **January 13, 2021** each party shall send a list of their proposed exhibits to the opposing party in order to allow sufficient time for a party to determine whether to object to the admission of an exhibit.

Statement of the Case: On or before **February 17, 2021** the parties shall file a consolidated clear, concise statement of the case to be read by the Court to the jury at the beginning of trial. If Counsel are unable to agree to a consolidated statement of the case, they shall file separate statements of the case. The parties shall meet on or before **February 2, 2021** and confer about the statement of the case.

Jury Instructions: On or before **February 2, 2021** the parties shall meet and confer to discuss proposed jury instructions. Plaintiff shall file a set of requested jury instructions upon which all of the parties agree. Requested instructions upon which the parties cannot agree must be filed separately by the requesting party. There shall be only one instruction per page and each instruction shall include a citation to supporting authority at the bottom of the page. On or before **February 16, 2021** all requested jury instructions shall be filed. On that same day, the parties shall also email a copy of the requested jury instructions in Word format, without citations, to sweazeaproposedtext@nmd.uscourts.gov. On or before **February 24, 2021** a party shall file a pleading setting forth any objections to an opposing party's requested instructions.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Kevin Sweazea", followed by a horizontal line.

KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE